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***Via Certified Mail –
Return Receipt Requested***

July 31, 2014

Wendy Chambers, Utilities Director & General Manager
City of Carlsbad
Carlsbad Municipal Water District
5950 El Camino Real
Carlsbad, CA 92008

City Council
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Ms. Chambers and Members of the City Council:

NOTICE

The Clean Water Act ("CWA" or "Act") requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

California River Watch ("River Watch") hereby places the City of Carlsbad, and City of Carlsbad Municipal Water District, a subsidiary district of the City of Carlsbad, collectively hereinafter referred to as "the City," on notice that following the expiration of 60 days from the date of this Notice, River Watch intends to bring suit in the United States District Court against the City for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Permit issued under CWA § 402 pursuant to CWA § 301(a), and consistent with the Code of Federal Regulations, and the Regional Water Quality Control Board,

San Diego Region, Water Quality Control Plan ("Basin Plan"), as exemplified by the illegal discharges of untreated sewage from the Carlsbad Municipal Water District collection system to United States Waters without a National Pollutant Discharge Elimination System ("NPDES") Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that discharge of pollutants is prohibited with the exception of enumerated statutory exceptions, CWA § 301(a), 33 U.S.C. § 1311(a). One such exception authorizes a polluter, which has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a polluter in violation of 33 U.S.C. § 1365, which authorizes citizen enforcement of violations of effluent standards or limitation, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1). Currently, the City has no NPDES permit allowing it to discharge pollutants to waters of the United States. Therefore, by virtue of its discharge of untreated sewage to United States waters without a NPDES permit, the City has been and continues to be in violation of CWA § 301(a), 33 U.S.C. § 1311(a).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. (*See* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, San Diego Region ("RWQCB").

BACKGROUND

The City of Carlsbad is a seaside resort in northern San Diego County with a population estimated in 2012 at 109,318. Its geography is characterized by 3 lagoons. It occupies a 7-mile stretch of Pacific coastline. The City's sewer service area is comprised of 4 major drainage basins which extend from approximately the eastern service area boundary and drain west to the coast.

The primary land use in the City's sewer service area is residential, with local and regional commercial centers and several large industrial business parks located along the east side of El Camino Real. McClellan-Palomar Airport and several resort

complexes and tourist related facilities are centered around the Legoland amusement park and the Park Hyatt Aviara Resort. The major industrial areas, including the airport, are located in the center of the service area along Palomar Airport Road.

The City's collection system provides wastewater collection services to 30.5 square miles through 252 miles of gravity sewer pipelines, 16 lift stations, and approximately 6,300 manholes. The City owns and maintains approximately 6.2 miles of force main. The material for the gravity pipelines is vitrified clay pipe, reinforced concrete pipe with a poly vinyl chloride liner (T-Lock liner) or Hobas pipe. The service area for the City includes the majority of Carlsbad with the exception of the southeast corner. Wastewater collection in the southeastern area, which includes the community of La Costa, is provided by the Vallecitos Water District and Leucadia Wastewater District. All wastewater flows are conveyed to the Encina Water Pollution Control Facility (EWPCF) located in Carlsbad, for treatment, and then disposal through the ocean outfall, or further treatment and delivery to the adjacent Carlsbad Water Recycling Facility for reuse.

The City's sewer service area extends from the Pacific Coast approximately 4 to 5 miles inland. Sewer flows are conveyed in 6 interceptors to the EWPCF, which is located along the coast. The cities of Vista, Carlsbad, Encinitas, and the Leucadia Wastewater District have capacity ownership rights in the interceptor pipelines.

The City has a history of sewer system overflows (SSOs) from its aging sewer lines. Structural defects in the collection system, which allow inflow and infiltration (I/I) of rainwater and groundwater into the sewer lines, result in a buildup of pressure, which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Batiquitos Lagoon, Buena Vista Lagoon, Encinas Creek, and the Pacific Ocean, all waters of the United States.

As recorded in California Integrated Water Quality System's ("CIWQS") Public SSO Reports, the City's collection system experienced 21 SSOs between July 21, 2009 and July 21, 2014, with a combined volume of 312,378 gallons – 37,550 gallons of which was discharged to surface waters. For example, on October 7, 2012, a spill occurred at 7382 Gabbiano Lane in Carlsbad, caused by a structural failure of sewer pipe. The spill volume was reported by the Carlsbad Municipal Water District as estimated at 34,040 gallons – 32,040 of which reached surface water, impacting Batiquitos Lagoon. On February 22, 2010, a spill occurred at 2500 Marron Road in Carlsbad. The spill was reported as 1,000 gallons, none of which was recovered, and the spill reached the fishing areas of Buena Vista Lagoon.

The City has a history of non-compliance with the SSO reporting requirements mandated by the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements ("WDR") Order No. 2006-0003-DWQ, governing the operation of sanitary sewer systems (Statewide WDR). The Statewide WDR requires the reports of SSOs to the CIWQS. The SSO reporting system shall include an estimate of the volume of any spill, the volume recovered, and the volume which reached a surface water. The City's field reports regularly indicate the SSO start time as the same time or within a few minutes of the time the City was notified of the SSO. For example, in reporting the spill which occurred at 1687 Calliandra Road in Carlsbad on April 24, 2013, the City's field report indicates both the estimated spill start time and the time the sanitary sewer agency was notified as exactly 11:00:00. These equivalencies are highly unlikely and result in an underestimation of the duration of the spill.

The City's common practice of underestimating the duration of the spill leads to underestimating the volume of the spill. The City's SSO reports generally do not indicate what method was used to estimate the total volume of the spill, which also calls into question the estimates of volume recovered and volume reaching a surface water. In the report referenced above the entry for item 44- "Explanation of volume estimation method used" is stated as "null". River Watch contends there is a high degree of likelihood that the City regularly underestimates the volume of SSOs as well as the volume which reaching a surface water.

In addition to surface overflows which discharge overland into surface waters, underground leakages (exfiltration) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent water with untreated sewage¹. River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the City's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The chronic defects in the City's collection system pose a substantial threat to public health.

Numerous critical habitat areas are found within areas of these SSOs. Neighboring waterways to Carlsbad include ecological reserves, coastal wetlands, and marine conservation areas. There is no record of the City performing any analysis of the

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See the Report of Human Marker Study issued in July of 2008 and conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

impacts of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

Any point source discharge of sewage effluent to waters of the United States must comply with technology based, secondary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

Discharges by the City as described herein also constitute a nuisance. These discharges are: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during or as a result of the transportation, disposal or treatment of wastes.

The City's ongoing violations – discharging pollutants to waters of the United States without a NPDES Permit – pose an immediate threat to public health and the environment, both from surface water impacts of overflows and underground leakage of untreated sewage, which impact both surface and groundwater. Furthermore, the illegal discharge of untreated wastes from the City's collection system is a significant contribution to the degradation of the Pacific Ocean and its tributaries and nearby waters such as Batiquitos Lagoon, Agua Hedionda Lagoon, Calavera Lake, and Buena Vista Lagoon, with serious adverse effects on the many beneficial uses of these waters. River Watch members residing in the area have a vital interest in bringing the City's operation of its collection system into compliance with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The specified standard, limitation, or order alleged to have been violated.

River Watch has identified discharges of raw sewage from the City's collection system to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. The activity alleged to constitute a violation.

River Watch has set forth narratives below describing the discharges of raw sewage to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the California State Water Resources Control Board's CIWQS SSO Public Reports and other public documents in the City's possession or otherwise available to the City, and incorporates by reference records cited from which descriptions of specific incidents were obtained.

3. The person or persons responsible for the alleged violation.

The entities responsible for the violations alleged in this Notice are hereby places the City of Carlsbad, and City of Carlsbad Municipal Water District, a subsidiary district of the City of Carlsbad, collectively hereinafter referred to as "the City," as well as employees of the City responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The location of the alleged violation.

The location or locations of the various violations are identified in records created and/or maintained by or for the City which relate to the City's sewage collection system as further described in this Notice.

5. The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.

River Watch has examined records of the SWRCB and the RWQCB relating to the City's collection system for the period from July 21, 2009 to July 21, 2014. The range of dates covered by this Notice is July 21, 2009 to July 21, 2014. River Watch will from time to time update this Notice to include violations which occur after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

6. The full name, address, and telephone number of the person giving notice.

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch". River Watch is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the waters of California including, but not limited to, its rivers, creeks, streams, tributaries, wetlands, vernal pools, and groundwater. River Watch's southern California mailing address is 3655 Westwood Blvd., #17, Los Angeles, CA 90034. River Watch may be contacted via email: US@ncriverwatch.org,

or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be addressed to:

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VIOLATIONS

River Watch contends that for the period from July 21, 2009 to July 21, 2014, the City has violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants from its collection system to waters of the United States without a NPDES permit. Said violations are evidenced in the City's Self Monitoring Reports, testing data compiled in compliance with orders of the SWRCB, and other documentation filed with the SWRCB or in the City's possession, and evidenced by the CIWQS SSO Reporting Program Database Records. Furthermore, River Watch contends these violations are continuing.

Violations	Description
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| 1825 | Collection system overflows caused by underground exfiltration. – This is an event in which untreated sewage is discharged from the collection system prior to reaching the wastewater treatment plant. Underground discharges are alleged to have been continuous throughout the 5-year period from July 21, 2009 to July 21, 2014. Evidence to support the allegation of underground discharge of raw sewage exists in the City's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the EWPCF reported in the City's records, and video inspection of the collection system. |
| 25 | SSOs – as evidenced in the SWRCB's CIWQS Interactive Public SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents and overflows incorrectly reported as not reaching a surface water. |

- 63 Failure to report SSOs – It is estimated by the EPA and private studies that for every SSO reported, there are at least 3 that go unreported. In some cases the overflows occur during storm events or due to stoppages and there is no incident report made due to lack of any observation of the event. In other cases SSO events are reported, but by the time personnel arrive at the site, the overflows have ceased and no follow-up is done. In some cases the incident is reported and observed by staff, but a formal report is not made to the State, in violation of the Statewide WDR.

REMEDIAL MEASURES REQUESTED

1. DEFINITIONS

- A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television (“CCTV”) inspections for gravity mains; manhole inspections for structural defects; and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program (“PACP”) rating system, developed by the National Association of Sewer Service Companies. The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.
- B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within 200 feet of surface waters.
- C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located within 200 feet of surface waters, including gutters, canals and storm drains which discharge to surface waters.
- D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:
- 5 – Most significant defect
 - 4 – Significant defect
 - 3 – Moderate defect
 - 2 – Minor to moderate defect
 - 1 – Minor defect

2. REMEDIAL MEASURES

River Watch believes the following remedial measures are necessary to bring the City into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the City's ongoing noncompliance with the CWA:

A. Sewage Collection System Investigation and Repair

The repair or replacement, within two (2) years, of all sewer lines in the City's sewage collection system located within 200 feet of surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within the past 10 years and were rated as Significantly Defective or given a comparable assessment.

Within 2 years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past 10 years.

Within 2 years after completion of the Surface Water Condition Assessment above, the City will:

- Repair or replace all sewer lines which have been found to be Significantly Defective;
- Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the City's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced;
- Sewer pipe segments that contain defects with a rating of 3 that are not repaired or replaced within 5 years after completion of the Surface Water Condition Assessment shall be re-CCTV'd every 5 years to ascertain the condition of the sewer line segment. If the City determines that the grade -3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the City shall complete such repair or replacement within 2 years after the last CCTV cycle;
- Beginning no more than one 1 year after completion of the Surface Water Condition Assessment, the City shall commence a Full Condition Assessment to be completed within 7 years. Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall be repaired or replaced within 3 years of the rating determination;

- Provision in the City's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every 5 years. Said program to begin 1 year following the Full Condition Assessment described above.

B. SSO Reporting and Response

Modification of the City's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:

- The method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered.
- For Category I Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.
- Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.
- Water quality sampling and testing to be required whenever it is estimated that 50 gallons or more of untreated or partially treated waste water enters surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, E. coli and a CAM-17 toxic metal analysis. The City shall collect and test samples from 3 locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the City will determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the nonstructural defect.
- Creation of website capacity to track information regarding SSOs; or in the alternative, the creation of a link from the City's website to the CIWQS SSO Public Reports. Notification to be given by the City to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

- Performance of human marker sampling on creeks, rivers, wetlands and areas adjacent to sewer lines including Batiquitos Lagoon, Buena Vista Lagoon and Encinas Creek to test for sewage contamination from exfiltration.

C. Lateral Inspection/Repair Program

Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

- Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 10 years prior to the transfer;
- The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years;
- A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, and (c) to non-residential uses where the structure served has been vacant or unoccupied for more than 3 years;
- Upon replacement or repair of any part of the sewer lateral;
- Upon issuance of a building permit with a valuation of \$25,000.00 or more;
- Upon significant repair or replacement of the main sewer line to which the lateral is attached.

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the community of Carlsbad. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, surfing, tide pool exploring, picnicking, wedding ceremonies, hiking, photography, painting, nature walks and the like. The members' health, use and enjoyment of these natural resources are specifically impaired by the City's alleged violations of the CWA as set forth herein.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505 (a) against the City of for the violations identified in this Notice.

During the 60-day notice period River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If the City wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues before the end of the Notice period. River Watch will not delay the filing of a lawsuit if discussions are continuing when the 60-day notice period ends.

Very truly yours,


Jerry Bernhaut

JB:lhbm

cc: Administrator
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